IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION
Dated: Nainital the June 28th , 2006
Criminal Misc. Bail Cancellation Application No. 546 of 2006

State of Uttaranchal ..... Applicant

Vs.

Gullu S/o Salekh
R/o village Khatakhedi
P.S. Jhabreda
District Haridwar ....Accused-respondent

With
Correction Application No. 920 of 2006
IN
Bail Application No. 490 of 2006

Gullu S/o Salekh
R/o village Khatakhedi
P.s. Khabreda
District Haridwar .....Applicant

Vs.

State of Uttaranchal .....Respondent

Arising out of case crime No. 27 of 2006
Under Sections 34, 342, 376 IPC
P.s. Laksar
District Haridwar

Hon'ble J.C.S. Rawat, J.

Heard Sri G. S. Sandhu learned A.G.A. and Sri Lalit Tewari learned counsel for the accused-Gullu.

Perusal of the record reveals that the bail was granted to the accused-Gullu on 09.06.2006 in which it was contended that the incident took place on 04.03.2006 and on 17.03.2006 the victim was produced before the S.D.M. before whom the victim has stated that she is 18 years of age and she went with the accused with her own accord. The statement made before the SDM was also filed in the bail application. On this assumption, the bail was granted to the accused-Gullu. Thereafter, a correction application bearing No. 920/2006 was filed alleging therein that the victim Ranjita did not go with the applicant-accused and on 05.03.2006 the victim went to Bihar with one-Chaukhat with her consent. Thereafter, she was recovered by the police and she was produced before the S.D.M., Laksar on 17.03.2006. It was further prayed in the correction application that the necessary correction may be carried out in the order accordingly.

In the meantime, the State has also filed a Bail Cancellation Application No. 546/2006 with the prayer to cancel the bail order dated 09.06.2006 passed in B.A. No. 490/2006. It has been alleged in the bail cancellation application that the Court has granted the bail to the accused-Gullu on the wrong assumption and wrong facts produced before this Court. It has been further alleged that the accused-Gullu has misled the Court and bail was granted on the wrong facts. It was contended on behalf of the State that the victim was subjected to gangrape by the accused persons and she had corroborated the factum of the FIR in the statement under section 164 recorded by the Judicial Magistrate. The medical report also reveals that the hymen was torn and the bleeding was present. It was contended that the statement, which was relied by the learned counsel for the applicant while making the submission that the statement dated 17.03.2006 of one Ranjita made before the SDM, Laksar, did not relate with the present case. The prosecution has stated that the victim was never produced before the SDM in this case. Perusal of the record reveals no such statement under section 164 was recorded before the SDM, Laksar. It is not transpired from the record that the statement of the victim was recorded by the SDM, Laksar in connection with the instant case. It is not revealed that she was given in the superdagi of any person. Learned counsel has relied upon the said statement in which it has been stated that the girl is above 18 years and as such this Court was of the view that the girl was a consenting party. Thus, the submissions made on the hearing of the documents produced before this Court at the time of bail are misconceived. This Court granted the bail to the applicant-accused on the wrong assumption of facts and documents produced before this Court. Thus, the bail has been obtained fraudulently by concealing the true facts.

In view of the above, the bail cancellation application is liable to be allowed. Bail Cancellation Application No. 546/2006 is allowed and the bail order dated 09.06.2006 passed in B.A. No. 490/2006 {Gullu Vs. State of Uttaranchal} is cancelled. The correction application is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 28.06.2006
LSR